

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	
HOUSTON PROMENADE	§	Case No.: 09-32395
ASSOCIATES I, LTD,	§	
	§	
and	§	
	§	
OLD HILLCROFT II ASSOCIATES,	§	Case No.: 09-32402
PARTNERSHIP,	§	
	§	
	§	Chapter 11
Debtors	§	(Jointly Administered)
	§	Case No.: 09-32395

JOHN VATISTAS'
MOTION TO DISBURSE FUNDS FROM THE REGISTRY OF THE COURT
TO THE CHAPTER 7 TRUSTEE

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EXPEDITED RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EXPEDITED BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR YOU BELIEVE EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW John Vatistas (“Vatistas”) and files this *Motion to Disburse Funds from the Registry of the Court to the Chapter 7 Trustee* (the “Motion to Release”) and in support thereof would respectfully show the Court as follows:

I. SUMMARY OF RELIEF REQUESTED

1. Vatistas respectfully requests that upon approval of the Settlement (defined below), this Court enter an order releasing the Funds (defined below) from the registry of the Court to Ben B. Floyd, the chapter 7 trustee (the “Trustee”) of the bankruptcy estate of NE 40 Partners, Limited Partnership, the debtor in Case No. 09-30478, pending in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, in satisfaction of the proposed settlement agreement (the “Settlement”) relating to *Airport Boulevard Apartments, Ltd v. NE 40 Partners, L.P., et al. (In re NE 40 Partners, L.P.)*, Adversary No. 09-03057 (the “Adversary”).

II. FUNDS HELD IN COURT’S REGISTRY

2. On April 6, 2009, Houston Promenade Associates I, Ltd and Old Hillcroft II Associates, Ltd (collectively, “H&H”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), thereby initiating bankruptcy case numbers 09-32395 and 09-32402, which have been jointly administered under bankruptcy case number 09-32395. [Case No. 09-32395, Docket No. 1; Case No. 09-32402, Docket No. 1.]

3. Pursuant to the *Amended Stipulation and Agreed Order Resolving Motion of Secured Creditor Tricostal Partners 08, LP for Relief from the Automatic Stay Pursuant to Section 362* (the “Stipulation”), certain of H&H’s real property was to be sold with a portion of

the sales proceeds to be distributed to Vatistas. [Case No. 09-32395, Docket No. 96.] More specifically, Vatistas was to receive \$50,000.00 of the sales proceeds (the “Funds”). Subsequent to the entry of the Stipulation, the Court entered its *Order Amending Paragraph C of the Amended Stipulation and Agreed Order Resolving Motion of Secured Creditor Tricostal Partners 08, LP for Relief from the Automatic Stay Pursuant to Section 362* (the “Amended Order”). [Case No. 09-32395, Docket No. 100.] Pursuant to the Amended Order, the Funds that were originally to be paid directly to Vatistas were instead ordered to be paid into the registry of the Court. To date, the Funds remain in the registry of the Court.

III. PROPOSED SETTLEMENT

4. On January 26, 2009, NE 40 Partners, Limited Partnership (“NE 40 Partners”) commenced Case No. 09-30478 by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. [Case No. 09-30478, Docket No. 1.]

5. On August 27, 2009, NE 40 Partners’ case was converted to a case under chapter 7 of the Bankruptcy Code. [Case No. 09-30478, Docket No. 91.] On August 28, 2009, the Trustee was appointed to serve as the chapter 7 trustee in NE 40 Partners’ converted case.

6. On January 26, 2009, NE 40 Partners commenced the Adversary by removing Cause No. 2008-CI-14084 filed by Airport Boulevard Apartments, Ltd against NE 40 Partners and various other defendants in the 408th Judicial District of Bexar County, Texas to this Court. [Adversary No. 09-03057, Docket No. 1.] The Trustee intervened in the Adversary. [Adversary No. 09-03057, Docket Nos. 117, 121, 123, 142, and 255.]

7. The Trustee and Vatistas (collectively, the “Parties”) have negotiated the Settlement regarding the Adversary. Contemporaneously with the filing of this Motion to Release, the Parties are filing a motion to compromise controversy pursuant to Federal Rule of

Bankruptcy Procedure 9019 in NE 40 Partners' Case No. 09-30478. The Settlement is conditioned by and contingent upon the Court's entry of an order granting the Motion to Release.

IV. RELIEF REQUESTED

8. If this Court approves the Settlement, Vatistas seeks an order to release and disburse the Funds in the amount of \$50,000.00 from the Court's registry to the Trustee in satisfaction of the Settlement.

WHEREFORE, John Vatistas respectfully requests that upon approval of the Settlement, the Court (i) enter an order to release and disburse the Funds in the amount of \$50,000.00 from the Court's registry to the Trustee in satisfaction of the Settlement; and, (ii) grant any and all further relief to which he may be entitled.

Dated: March 22, 2011.

Respectfully submitted,

OKIN ADAMS & KILMER LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was provided *via* ECF and/or United States Mail to the parties listed below on March 22, 2011.

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